SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 407

WALTER HUMPHREY, ETC., ET AL.,
PETITIONERS,

vs.

C. W. MOORE, ETC., ET AL.

No. 408

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89, PETITIONER,

vs.

C. W. MOORE, ET AL.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

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[fol. 5]

IN JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

C. W. Moore, Individually and for and on Behalf of Members of the Class, Plaintiffs,

vs.

Local Union No. 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Dealers Transport Company, Defendants.

Complaint—Filed November 8, 1961

Count I

Comes the plaintiff, C. W. Moore, individually and for and on behalf of members of the class, and for his cause of action designated as Count I herein, states:

(1) Plaintiff, C. W. Moore, is a resident of Louisville, Kentucky, and an employee of Dealers Transport Company; that this action is brought under Rule 23.01 as a class action for and on behalf of all the employees of Dealers Transport Company as of March 1, 1961; that there are approximately 300 of said employees and that it is impracticable to name all as parties plaintiff, and that this plaintiff has a common question of law and fact with all [fol. 6] of the employees of said Transport Company as of March 1, 1961, and that a common relief is sought by this action.

(2) The defendant, Local Union 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, (hereafter referred to as Local No. 89) is an unincorporated association, engaged in the organizing and unionizing of persons employed in various trucking

concerns and specifically the employees of Dealers Transport Company and E & L Transport Company, both of Louisville, Jefferson County, Kentucky.

(3) The defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter referred to as International Brotherhood) is an unincorporated association engaged in the organizing and unionizing of persons employed in various trucking concerns and elsewhere, and is the parent and national organization, of which the co-defendant, Local No. 89, is a part.

(4) Dealers Transport Company is a corporation with offices at Fern Valley Road, Louisville, Jefferson County, Kentucky, and is incorporated in the State of Tennessee and operates a trucking business throughout the southern portion of the United States.

(5) Plaintiff, for his cause of action herein, states that on March 1, 1961, the employees of Dealers Transport Company, through their bargaining agent, the International Union, above referred to, entered into a contract for the employees of Dealers Transport Company for a period of four years, beginning March 1, 1961 and ending February 29, 1964; that after the making of said contract, the E & L [fol. 7] Transport Company, a rival trucking concern, discontinued business in Louisville, Kentucky and made a trade with Dealers Transport Company whereby Dealers Transport Company took over the secondary runs theretofore made by E & L Transport Company and in return therefor were assigned certain secondary runs belonging to Dealers Transport Company in the state of Ohio, and other considerations unknown to plaintiff; that after Dealers Transport Company took over the secondary runs of E & L Transport Company, two former employees of E & L Transport Company, to-wit, R. L. Lewis and Howard Baker, filed a grievance under the provisions of the Automobile Carrier Truckaway Agreement, copy of which is filed herewith as Exhibit A and made a part hereof, the same as if copied at length herein, asking that all employees of E & L be sandwiched in with the employees of Dealers Transport Company and given seniority on the basis of the seniority

which theretofore they had acquired with E & L Transport Company; that this plaintiff and the local employees of Dealers Transport Company relied on Local Union No. 89, acting by and through its president, Paul Priddy, and the integrity and fairness of Local No. 89 and the International Brotherhood, its officers and agents, to take care of their interest in said grievance, and that the employees of Dealers Transport Company were assured by Paul Priddy, president of Local No. 89, that they had nothing to worry about and that precedent in the industry provided that when a new business is taken over that its employees do not displace the original employees of the company. The griev- [fol. 8] ance went to arbitration before the local grievance committee and there it was deadlocked by Paul Priddy with the statement that this was a matter to be handled by the Automobile Transporters Joint Conference Committee and that the hearing before this committee would be in Detroit, Michigan; that said hearing was held on the 18th day of October, 1961, at Detroit, Michigan, and that there the representatives of Dealers' employees were first informed by the said Paul Priddy that he had gone over to the other side and that he was urging that the E & L Transport Workers be employed by Dealers on the basis of their previous seniority with E & L Transport Company; that said Paul Priddy, at the time, was a member of the Automobile Transporters Joint Conference Committee; that he argued the case for the E & L workers before the Committee and then withdrew as a member; that his actions in deceiving these plaintiffs as to his position left them without representation before the Joint Conference Committee and the defendant, International Brotherhood, conspired with and assisted the defendant, Local No. 89, and its president, Paul Priddy, in bringing about this result, by reason of which the Joint Conference Committee, acting on the request of Paul Priddy, president of Local No. 89, handed down a decision as follows:

"Local Union No. 89 (Louisville vs. Dealers Transport Co. and E & L Transport Co. of Ky. Re: Request of Employees R. L. Lewis and Howard Baker on behalf of themselves and other former employees of E & L

Transport Co. of Ky. as to their seniority rights with Dealers Transport Co. because of the discontinuance of operations in Louisville by E & L Transport Co. of Ky.

[fol. 9]

DECISION: By unanimous vote the Committee held that in accordance with Article 4 and particularly subsections 4 and 5 of the Automobile Carrier Truckaway Agreement, Automobile Carrier Driveaway Agreement and the Automobile Carrier City Delivery, Pull-Out, Mounting Service and Yard Agreement and Garage Rider, the employees of E and L Transport Co. of Ky. and Dealers Transport Company at the Louisville, Kentucky Terminal shall be sandwiched in on master seniority boards using the presently constituted seniority lists and the dates contained therein at Louisville, Kentucky (past practice on layoffs and recalls shall be maintained as in the past).

1. Presently constituted terminal seniority lists shall apply for seniority purposes recognizing that the first fifty (50) men who came from Memphis, Tennessee to Louisville, Kentucky maintained their original date of hire and took their proper place on the Louisville seniority boards of Dealers Transport Company. Men subsequently who came to Louisville from Memphis went to the bottom of the board at Dealers Transport Company and maintained their seniority for fringe benefits only.

2. This shall be accomplished within thirty (30) days. Copies of this decision shall be posted on the bulletin boards at both companies."

Plaintiff further states that the decision above referred to was contrived, planned and brought about by Paul Priddy as president of Local Union No. 89; that the power and influence of the International Union was used against

the local employees of Dealers Transport Company, and that the effect of the above ruling deprives at least 250 of the 300 original employees of Dealers Transport Company of their jobs and replaces them with the former employees of E & L Transport Company; that said decision is arbitrary and capricious and contrary to any previous existing practice in the industry, and that it is a violation of sub-[fol. 10] section 2 of Section B of Section 6 of Article IV, which sets out the procedure to be followed when a branch terminal division is partially closed, said section providing that the employees from such closed division are to go to the bottom of the seniority board and a violation of other sections of said agreement (Exhibit A), and Supplement attached hereto.

Plaintiff further states that the employees of Dealers Transport Company had joined the International Union for the purpose of having said Union act as the bargaining agent for these employees; that said International Union, by and through the president of Local Union No. 89, Paul Priddy, has deceived and failed completely to represent said employees, and has acted against the interest of said employees in causing to be brought about the decision above set out; that this plaintiff and the employees of Dealers Transport Company have exhausted all appeals under the Automobile Carrier Truckaway Agreement, and have no other avenue of appeal except to a court of law.

(6) Plaintiff further states that this plaintiff and the employees of Dealers Transport Company have no adequate remedy at law; that the 250 employees about to be displaced will lose their employment and livelihood and that many are in the process of buying homes and they will lose their homes, and that no remedy at law through an action for damages can replace the security of the jobs which they now have and which they would still retain, had not the International Union, through Local No. 89, failed completely to represent the interest of these employees; that irreparable harm, damage and injury will be done to the [fol. 11] plaintiff and the employees of Dealers Transport Company unless the Teamsters Union and Dealers Transport Company are enjoined from putting into effect the

ruling above set out; that a temporary injunction should be issued against the company and Local Union No. 89, and the International Brotherhood, restraining them from proceeding under the above mentioned decision until this action has been heard by the court, and that no restraining order or injunction has heretofore been refused by this or any other court.

Count II

Plaintiff, C. W. Moore, individually and for and on behalf of members of the class, for an alternative cause of action under Rule 18.01 of the Kentucky Rules of Civil Procedure, and without waiving any of the allegations contained in Count I of this complaint, states:

(1) Adopts, reiterates and makes a part of Count II of this complaint the allegations contained in numerical paragraphs 1, 2, 3, 4, and 5 of Count I herein.

(2) That in the event the court denies injunctive relief, that the employees of Dealers Transport Company are about to suffer damage through the loss of their jobs; that all of the employees of Dealers Transport Company have paid an initiation fee of $50.00 per man to join the Teamsters Union; that they pay $5.00 per month dues; that the contract under which the Dealers employees work was negotiated for the use and benefit of the employees of [fol. 12] Dealers Transport Company and not as an instrument to be used by the International Union to displace the local employees and put the workers of E & L Transport Company in their jobs; that because of the false and deceitful action of Paul Priddy, acting for and on behalf of Local No. 89 as its president, in deadlocking the local grievance committee, and taking the matter to the Automobile Transporters Joint Conference Committee, and the further connivance of Paul Priddy with the employees of E & L Transport Company, in assuring the local employees of Dealers that they had nothing to worry about, that precedent in the industry would take care of their position and that employees of a branch terminal or division that is closed automatically start at the bottom of the

seniority list, that because of these representations and because of the action in securing the decision set out in Count I, that when and if said decision goes into effect, 250 of the employees of Dealers Transport Company will be displaced and will lose their jobs; that the action of the International Union is arbitrary, and capricious and in violation of sub-section 2, Page 17, and other provisions, of the Automobile Carrier Truckaway Agreement under which the employees of Dealers Transport Company work, and that the average pay of the employees of Dealers Transport Company is $8,000.00 per year; and that the loss to the 250 employees of Dealers Transport Company for the balance of the duration of the contract in question will amount to $6,625,000.00.

[fol. 13] (3) Plaintiff further states that the employees of Dealers Transport Company now have and always have had a friendly relationship with their employer; that they have no dispute with their employer; that except for the interference of Local No. 89 and the International Union, acting through Paul Priddy, the Original employees of Dealers and the company would have agreed on the grievance filed by the two former employees of E & L Transport Company; but that because of the interference of the International Union with the employment of these plaintiffs, they are about to be damaged and will be damaged in the sum of $6,625,000.00.

Wherefore, Plaintiff, C. W. Moore, individually and for and on behalf of members of the class, under Count I herein, prays the court for a temporary injunction against the Company, Local No. 89 and the International Brotherhood, to prevent the carrying into effect the decision set out in paragraph 5 of Count I, and further prays that the temporary injunction be made final and permanent upon final adjudication of this cause; and in the alternative, under Count II herein, the plaintiff prays for a judgment for damages for he and members of the class in the sum of $6,625,000.00 and for a trial by jury upon all issues raised in Count II, and the plaintiff prays for his costs herein

expended and any and all relief to which he and the members of the class are entitled.

Brown & Father, John Y. Brown, Kentucky Home Life Bldg., Louisville, Kentucky, Telephone JU 4-1244.

[fol. 14] *Duly sworn to by C. W. Moore, jurat omitted in printing.*

[fol. 19]

EXHIBIT "A" TO COMPLAINT

AUTOMOBILE CARRIER
TRUCKAWAY
AGREEMENT

Period Covered—March 1, 1961
through February 29, 1964

[Emblem]

NATIONAL TRUCKAWAY AND
DRIVEAWAY CONFERENCE
of the
International Brotherhood
of
Teamsters, Chauffeurs, Warehousemen
and Helpers of America

[fol. 19a]

ARTICLES OF AGREEMENT

AUTOMOBILE CARRIER TRUCKAWAY AGREEMENT

The ..... hereinafter referred
(Company)
to as the Employer,

and

the National Truckaway and Driveaway Conference and Local Union No. ....., affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, agree to be bound by the terms and provisions of this Agreement.

ARTICLE 1

Section 1. UNION SHOP AND DUES

(a) The Employer recognizes and acknowledges that the National Truckaway and Driveaway Conference, on behalf of its member local unions, is the exclusive representative of all employees in the classifications of work covered by this Agreement for the purposes of collective bargaining as provided by the National Labor Relations Act.

* * * * * * *

[fol. 19b]

ARTICLE 4

Section 1. SENIORITY

Seniority rights for employees shall prevail. Seniority shall be broken only by discharge, voluntary quit, or more than a two (2) year layoff. A list of the employees arranged in the order of their seniority shall be posted in a conspicuous place and shall be available to all employees. Any controversy over the employees' standing on such lists shall be submitted to the joint grievance procedure (ARTICLE 7). Such determination shall be made without regard to

whether the employees involved are members or not members of a Union. * * *

* * * * * * * *

[fol. 19c]

Section 5.

In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved. Any controversy with respect to such matter shall be submitted to the joint grievance procedure (ARTICLE 7).

* * * * * * * *

[fol. 19d]

ARTICLE 6

Section 1. LOCAL JOINT COMMITTEE

The Employers and the Union in each city and/or area where there are three or more Truckaway and/or Driveaway companies, shall together create a permanent Local Joint Committee, which shall consist of an equal number, appointed by Employers and Union, but not less than three (3) from each group. Each member may appoint an alternate in his place.

The Local Joint Committee shall at its first meeting formulate rules of procedure to govern the conduct of its proceedings. Each Local Joint Committee shall have jurisdiction over disputes and grievances involving said Local Union.

Section 2. AUTOMOBILE TRANSPORTERS JOINT CONFERENCE COMMITTEE

The Employers and the Unions shall together create a permanent Automobile Transporters Joint Conference Committee which shall consist of duly elected delegates of [fol. 19e] the Employers (Automobile Transporters Labor Division) and of the Unions (National Truckaway and Driveaway Conference).

Section 3. Function of Committees

It shall be the function of the various committees above referred to, to settle disputes which cannot be settled by the Employer and the Local Union in accordance with the procedure established herein.

Section 4. Attendance

Meetings of all Committees above referred to must be attended by each member of such Committee or his alternate.

Section 5. Examination of Records

The Local Joint Committee or the Automobile Transporters Joint Conference Committee shall have the right to examine time sheets and any other records pertaining to the computation of compensation of any individual or individuals whose pay is in dispute.

ARTICLE 7

Section 1. No Strike and/or Lock-Out

The Unions and the Employers agree that there shall be no strike, tie-up of equipment, slow-downs or walk-outs on the part of the employees, nor shall the Employer use any method of lock-out or legal proceeding without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise.

[fol. 19f] Section 2. Grievance Procedure

(a) Disputes shall first be taken up between the Employer and the Local Union involved. If the parties are unable to settle the dispute, the same shall then go to the Local Joint Committee. In any city where there is no Local Joint Committee, the same may be appealed directly to the Automobile Transporters Joint Conference Committee. Where a Local Joint Committee, by a majority vote, settles a dispute, no appeal may be taken to the Automobile Transporters Joint Conference Committee. Such a decision shall be final and binding on both parties and will apply only in

the jurisdiction of the involved Local Union. However, the Automobile Transporters Joint Conference Committee reserves the right to review all such decisions and facts pertaining thereto, and should it find any such decision has been rendered in error according to this Agreement and/or applicable Rider and the facts surrounding the particular case, the Automobile Transporters Joint Conference Committee may revoke the original decision, render a new decision, and order same to be put into effect.

(b) Where a Local Joint Committee is unable to agree or come to a decision on a case, it shall, at the request of the Union or the Employer involved, be appealed to the [fol. 19g] Automobile Transporters Joint Conference Committee at the next regularly constituted session. Committee's failure to meet, not due to complaining side's fault, withdraws benefits of this Article.

(c) If any grievance or disagreement is not satisfactorily settled, as provided above, then both the Union and the Employer shall submit the grievance to a Board of Arbitration consisting of three (3) members:

One (1) member to be appointed by the Union; one (1) member by the Employer; and the two (2) together appointing a third disinterested arbitrator.

All grievances submitted to the Board of Arbitration must be heard and disposed of within two (2) weeks. The findings of the Arbitration Board shall be final.

(d) It is agreed that all matters pertaining to the interpretation of any provision of this Agreement, whether requested by the Employer or the Union, must be submitted to the full Committee of the Automobile Transporters Joint Conference Committee, which Committee, after listening to testimony on both sides, shall make a decision.

[fol. 19h] (e) Any decision of the Automobile Transporters Joint Conference Committee shall be final and conclusive and binding upon the Employer and the Union, and the employees involved.

(f) In the event of strikes, work-stoppages or other activities which are permitted in case of deadlock, default, or failure to comply with majority decision, no interpretation of this Agreement by any tribunal shall be binding upon the Union or affect the legality or lawfulness of the strike unless the Union stipulates to be bound by such interpretation, it being the intention of the parties to resolve all questions of interpretation by mutual agreement. Nothing herein shall prevent legal proceedings by the Employer where the strike is in violation of this Agreement.

Section 3. ROAD CHECK CARS

All Road Check Cars must have proper identification and written copy of violations, if any, given to driver at time of check. All photo observation films taken by cameras approved by the Joint Committee shall be accepted as evidence, but drivers must be given a written copy of such violation at the scene or within a reasonable time after photo was taken.

[fol. 19i] It is further agreed that all notices of violations and disciplinary action, if any, under this section shall be given to the driver within ten (10) days, except where a driver is not available and in such cases not to exceed sixteen (16) days.

• • • • • • • •

[fol. 19j]

ARTICLE 38

MULTI-EMPLOYER UNIT

The undersigned Employer agrees to be bound by all of the terms and provisions of this Agreement, and also agrees to be bound by the interpretations and enforcement of the Agreement.

The Employer further agrees to participate in joint negotiations of any modification or renewal of the Agreement and to become a part of the multi-employer unit set forth in the Agreement.

• • • • • • • •

[fol. 19k] IN WITNESS WHEREOF, the parties hereto have set their hands and seals this ..... day of ..... 1961, effective March 1, 1961, except as specifically provided for herein.

NEGOTIATING COMMITTEE

For the Employees:

NATIONAL TRUCKAWAY AND DRIVEAWAY CONFERENCE
James R. Hoffa, Chairman
William R. Walsh, Secretary
Frank Fitzsimmons
Joseph de Lavan
James M. Feltis
E. J. Robillard
Dale Ferris
Clay Ward

For the Employers:

AUTOMOBILE TRANSPORTERS LABOR DIVISION
Carney D. Matheson, Chairman
Albert D. Matheson, Secretary
Robert A. Parr, Ass't Secretary
Donald Hayden
Walter F. Carey
E. A. Cassaroll
J. H. Stark, Jr.
E. G. Rice
Horace Taylor
D. W. Rentzel
George Demos

[fol. 191] LOCAL UNION No. ..... affiliate of I. B. of T., C. W. & H. of A.

By .....
(Signed)

.....
(Title)

.....
(Company)

By .....
(Signed)

.....
(Title)

ADDRESS: .....
(Street)

.....
(City) (State)

[fol. 43]

IN JEFFERSON CIRCUIT COURT
CHANCERY BRANCH, FIRST DIVISION
No. 61535

[Title omitted]

AMENDED COMPLAINT

Comes the plaintiff, and for his Amended Complaint filed herein, reiterates each and every allegation of the original Complaint filed herein and in addition, states that Walter Humphrey, Howard Baker, Earl Surface, Ross Johnson, Arthur Gilpin and Ray Lewis are all employees of E & L Transport Company, and together with other [fol. 44] employees of said Firm, in circumstances similar to the above-named employees of E & L Transport and will be prejudice if the relief sought by the plaintiffs in

this action is granted by this Court and said parties, by direction of Court, are named as defendants in this action.

Wherefore, it is prayed that this Amended Complaint be filed and that the relief sought in the original Complaint filed herein by plaintiff be granted.

John Young Brown, Michael J. Clare.

[fol. 54]

IN JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

No. 61535

[Title omitted]

MOTION TO DISMISS BY DEFENDANT, GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89

Comes the Defendant, General Drivers, Warehousemen and Helpers, Local Union No. 89, and moves the Court to require the Plaintiff to amend its Complaint to show the proper name of said Defendant and said Defendant further moves the Court to Dismiss the Complaint against it herein, because said Complaint does not state facts sufficient to constitute a cause of action against it.

Hardy, Logan & Tross, 506 West Jefferson Street, Louisville 2, Kentucky, JUniper 3-8371, By Ralph H. Logan.

Certificate of service (omitted in printing).

[fol. 55]

IN JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

CR 61535

[Title omitted]

ORDER SUSTAINING MOTION TO QUASH SERVICE OF SUMMONS AND OVERRULING MOTION FOR TEMPORARY INJUNCTION—November 24, 1961

This action having been tried to the Court on November 18 and November 24 on plaintiffs' motions for a temporary injunction, and the Court having heard the arguments of counsel, and being advised,

It Is Ordered as follows:

1. That the motion to quash the service of summons on the defendant, "International Brotherhood of Teamsters, Chauffeurs, etc.," served November 18, 1961, by delivering a copy to Paul Priddy, President of Local Union No. 89, be and it is sustained.

2. That the plaintiffs' motion for a temporary injunction against the implementation of the decision or arbitration award of October 18, 1961, by the Automobile Transporters Joint Conference Committee in Detroit be and it is overruled.

November 24, 1961

Macauley L. Smith, Judge.

In this case, the employer, Dealers Transport Company, was engaged as a competitor of E & L Transport Company in the transportation of new cars and trucks from the Ford Motor Company, Louisville assembly plant. Some time in [fol. 56] the Spring of 1961 Ford announced (probably because of the increasing number of its vehicles being transported piggy back by rail carriers) that in the future it would deal only with one of the two. Negotiations followed between the two truckaway carriers, and they determined that, subject to ICC approval, Dealers Transport would take over E & L's routes out of Louisville and E & L would take over certain operations of Dealers in Ohio and out of Memphis.

A grievance by two employees of E & L, who anticipated losing their jobs, was filed with Local 89 which represented the (Louisville) employees of both employers. Without decision in Louisville, these grievances were forwarded to Detroit for hearing by the Automobile Transporters Joint Conference Committee. Plaintiffs complained that up until a few moments of the hearing in Detroit they were led to believe by the President of Local 89, Paul Priddy, and his chief agent (with respect to these two employers) Les Atterbury, that the position of Dealers Transport employees would be furthered by them before the Joint Conference Committee in Detroit; whereas, in fact, Priddy at the hearing made a statement favoring "sandwiching in" of the E & L employees into the Dealers Transport seniority list with the contemplated effect that a number of the latter will lose their seniority and may lose their jobs.

The Joint Conference Committee in Detroit is composed of equal representation of the representatives of labor and of industry, and no contention is made that the pertinent facts with respect to this proposed "merger" or "absorption" of routes were not truthfully disclosed to the Committee. While plaintiff and those whom he represents were disappointed in the action of their Local 89 representatives, there were three shop stewards from Dealers Transport attending the Detroit meeting, and it would be a matter of

idle speculation to assume that the result would have been different had the matter been differently presented. [fol. 57] This Court conceives that the provisions of Article 4, Section 5, Page 14, in the printed Agreement effective March 1, 1961, governed this state of facts instead of Article 4, Section 6, subsection 2 on page 17, of said printed Agreement. This Court cannot follow counsel for plaintiff's argument that the paragraph on page 2 of the four page rider to said contract, providing:—

> "The Louisville domiciled employees of the Employer shall have exclusive rights to all work originating at the Louisville Terminal."—

is determinative of the controversy. When the E & L employees become employees of Dealers Transport, they will be Louisville domiciled employees of the employer, and this Court believes their rights are governed by Article 4, Section 5, mentioned above, and that a binding determination of the controversy was made in Detroit on October 18, 1961.

November 24, 1961

Macauley L. Smith, Judge.

cc: Messrs. John Young Brown, Ralph Logan, Newell N. Fowler (2 copies to each).

[fol. 63]

IN JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

[Title omitted]

TEMPORARY INJUNCTION ORDER—November 29, 1961

The above styled cause coming on to be heard this 29th day of November, 1961, on appeal to the Court of Appeals of Kentucky from an order of the Jefferson Circuit Court denying the temporary injunction to the plaintiff herein and the court having considered the record and heard the argument of counsel herein and being advised;

It is hereby Ordered and Adjudged that the defendants, Local Union No. 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Dealers Transport Company, and each of them, be and they are now and hereby enjoined from putting into effect or enforcing the decision of the Automobile Transporters Joint Conference Committee, which reads as follows:

* * * * * * *

[fol. 64] And further that said temporary injunction shall be effective from this date until further orders of this court, on condition only that the plaintiff file a bond, with surety, in the amount of $50,000 with this court to pay such damages to the defendants, if any, as the said defendants may [fol. 65] sustain by reason of this temporary injunction, if the court shall eventually decide that the plaintiff herein was not entitled to this temporary injunction.

It is further Ordered and Adjudged that any action taken by the defendants herein to enforce the above set out decision shall be revoked and any employees who are members of the class of plaintiffs herein, who have lost their jobs by reason of said decision, shall be reinstated to their jobs pending further orders of the court.

Robt. B. Bird, Judge.

Brown & Father, By John Y. Brown, Attorneys for Plaintiff.

Ralph H. Logan, Attorney for Defendants.

[fol. 68]

IN JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

No. 61535

[Title omitted]

MOTION TO DISMISS BY DEFENDANTS, WALTER HUMPHREY, ETC. ET AL.

The Defendants, Walter Humphrey, Ross Johnson, Howard Baker, Earl Surface, Arthur Gilpin and Ray Lewis, representative of the class of employees of the E & L Transport Company, move the Court to Dismiss the Complaint and the amended Complaint herein, because it does not state sufficient facts to constitute a cause of action against them.

Hardy, Logan & Tross, 506 West Jefferson Street, Louisville 2, Kentucky, JUniper 3-8371, By Ralph H. Logan, Attorney for Defendants.

Certificate of service (omitted in printing).

[fol. 69]

IN JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

No. 61535

[Title omitted]

MOTION TO DISMISS BY DEFENDANT, GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89

Comes the Defendant, General Drivers, Warehousemen and Helpers, Local Union No. 89, and in addition to its Motion to Dismiss heretofore filed in this action, further moves the Court to dismiss the Complaint and the Amended Complaint because the jurisdiction of this Court has been preempted by the provisions of the National Labor Relations Act.

Hardy, Logan & Tross, 506 West Jefferson Street, Louisville 2, Kentucky, JUniper 3-8371, By Ralph H. Logan, Attorneys for Defendant, Local 89.

Certificate of service (omitted in printing).

[fol. 70]

IN JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

CR 61535

[Title omitted]

JUDGMENT—December 4, 1961

The parties by counsel having agreed that the within action might be submitted in chief to the Trial Court on the proof introduced herein November 18 and 24, 1961, on motion for temporary injunction together with brief additional testimony of Mr. Stovall heard this day, and the Court having considered all of said evidence, for the reasons stated in Memorandum Opinion filed herein on November 24, 1961,

It Is Ordered and Adjudged as follows:

1. That plaintiff's motion for a permanent injunction against the implementation of the decision of the Automobile Transporters Joint Conference Committee in Detroit on October 18, 1961, be and it is overruled.

2. That plaintiff's complaint as amended be and it is dismissed.

3. That defendants recover of plaintiff their costs herein expended.

4. That the order of temporary injunction signed herein on November 29, 1961, by Chief Justice Bird be and it is continued in effect pending the contemplated appeal herein.

December 4, 1961

Macauley L. Smith, Judge.

cc: Messrs. John Young Brown, Ralph H. Logan, Newell N. Fowler.

[fol. 78]
IN COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

C. W. MOORE, Individually, and for and on behalf of members of the Class, Appellant,

vs.

LOCAL UNION No. 89, ETC. and DEALERS TRANSPORT COMPANY, et al., Appellees.

ORDER ADVANCING APPEAL AND OVERRULING MOTION FOR ORAL ARGUMENT—Entered December 11, 1961

The Court sustained the motion of appellant to advance the appeal herein and said appeal is now advanced.

The Court having considered the motion for an oral argument, and being advised overrules said motion for an oral argument.

It is so ordered.

Entered this December 11, 1961.

Robert B. Bird, Chief Justice.

[fol. 79]
IN COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

[Title omitted]

ORDER SUBMITTING CASE—December 15, 1961

Came appellant, by counsel, and filed memorandum briefs and notice.

Came appellees, by counsel, and filed memorandum briefs and notice.

The Court being sufficiently advised, the above styled case is ordered submitted December 15, 1961.

[fol. 80]

IN COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

C. W. MOORE, Individually and for and on Behalf of Members of the Class, Appellants,

vs.

LOCAL UNION No. 89, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND DEALERS TRANSPORT COMPANY, Appellees.

ORDER GRANTING PERMANENT INJUNCTION —Entered December 15, 1961

This day this cause came on for hearing on appeal and the Court having reviewed and reversed the decision of the Jefferson Circuit Court herein, It Is Now Ordered that the temporary injunction granted by this Court on the 29th day of November, 1961, be made permanent.

And, It Is Further Ordered that the injunction bond, executed by the appellants in the sum of $50,000.00, be and it hereby ordered cancelled, set aside and held for naught.

The opinion herein will be written and rendered at a later date.

Entered this 15th day of December, 1961.

Robert B. Bird, Chief Justice.

[fol. 84]

IN COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

Modified: May 4, 1962

C. W. MOORE, Appellant,

v.

LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, et al., Appelles.

Appeal From Jefferson Circuit Court

Chancery Branch—First Division

Hon. Macauley L. Smith, Judge

OPINION OF THE COURT BY JUDGE PALMORE
—Rendered February 13, 1962

Affirming in Part

Reversing in Part

This injunction suit brought as a class action by a member of a labor union questions the right of the union and the plaintiff's employer, Dealers Transport Company, to carry out the terms of a decision relating to job seniority rights. The decision in question was reached through the grievance procedure set forth in a contract between the union and the employer. The chancellor upheld the decision and denied relief.

Dealers Transport Company, of Memphis, Tennessee, and E & L Transport Company, of Detroit, Michigan, were competitors in the transportation of new automobiles and trucks from the Louisville assembly plant of the Ford Motor Company. With the development of multi-level or "piggy-back" railroad shipments they began to lose business, and Ford advised both companies that eventually

there would be room for only one of them. Following discussions over a period of 1½ to 2 years it was agreed be-
[fol. 85] tween Dealers and E & L that E & L would withdraw, leaving the Louisville field to Dealers. This arrangement does not involve the sale or transfer of any equipment, facilities, or other property, but an application has been made to the Interstate Commerce Commission for the transfer to Dealers of E & L's authority to make "secondary" runs out of Louisville. For this transfer Dealers is to pay a nominal consideration covering the expense of the transaction. There was and is no agreement between the companies calling for a transfer of any employees from one to the other.

Because of the increased competition from both rail and water shippers, Dealers and E & L decided also that it would be advisable for each of them to retrench by drawing its operations closer to home. So, at the same time the application was made for a transfer of E & L's secondary authority out of Louisville to Dealers, two other applications were submitted to the I.C.C., as follows:

(1) To authorize the sale and transfer to E & L of Dealers' initial authority out of Lorraine, Ohio, along with physical assets such as tractors, shop equipment, and terminal facilities there located.

(2) To authorize the sale and transfer to Dealers of E & L's secondary authority to serve New Orleans and Shreveport, Louisiana, and Jackson, Mississippi.

It was emphasized in the testimony that each of these proposed transfers is separate, none being contingent on either of the others. All are pending before the I.C.C.

Most if not all of the labor forces at both Dealers and E & L are members of Local Union No. 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen
[fol. 86] and Helpers of America, which in turn is "affiliated" with two autonomous but apparently interlocking organizations, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the National Truckaway and Driveaway Conference. For convenience we shall refer to these three organizations as the Local Union, the International, and the National Conference.

The Teamsters Union, as it is commonly called, has represented the employees of E & L and its predecessors in business for over 20 years and has represented the Dealers employees since 1955 or 1956. The National Conference, in behalf of its member local unions, is the exclusive representative of the employees for purposes of collective bargaining, and its standard contract for the period March 1, 1961, to February 29, 1964, printed in booklet form, has been separately executed by Dealers and by E & L. In each instance the agreement is signed by the Local, the National Conference, and the employer, but not by the International as such.

The standard contract secures job seniority rights to the employees. These rights are established, broadly speaking, on a terminal or local rather than a company-wide basis. For example, Article 4, Sec. 1, says: "Terminal seniority shall prevail at all times except as provided for in Article 4, Section 6, Subsection (b)2." The latter subsection provides that if a branch or terminal is closed or partially closed and its work transferred to another branch or terminal an employee transferring from one to the other shall go to the bottom of the seniority board for purposes of job selection but shall exercise his company seniority for lay-off purposes and all other contract benefits. When a new branch or terminal is opened a new seniority board is established, and an employee who transfers to it from another location loses his seniority rights at the old terminal at the end of 2 years. (In the case of [fol. 87] Dealers, which established its Louisville terminal in 1955, there was a special exception under which the first 50 employees transferring from Memphis were permitted, for some reason not disclosed in the record, to carry with them the original seniority dates.)

The standard contract (Article 7, Section 2) further provides a grievance procedure under which "disputes" shall first be taken up between the employer and the local union involved. On their failure to agree the dispute is taken before a "Local Joint Committee" composed of both union and management representatives. If this committee cannot resolve the controversy it may be appealed to a body called the Automobile Transporters Joint Conference

Committee (hereinafter called the Detroit committee), which consists of both labor and industry-wide management representatives. When this panel is unable to agree the matter must be submitted to further arbitration.

Though E & L is still operating in Louisville, in August of 1961, when this controversy developed, a shift of business from E & L to Dealers obviously was taking place. As E & L began to drop its men employment at Dealers increased. Some of the E & L men were taken on by Dealers, but as the layoffs at E & L accelerated it was inevitable that there would be no room at Dealers for any more. Then it was that two of the former employees of E & L filed with the Local Union a grievance claiming that they and other displaced employees of E & L were entitled to employment by Dealers through a merger of the respective seniority lists of the two companies.

Without taking the question up with Dealers (thereby omitting the first step in the grievance procedure), the Local Union submitted it to the Local Joint Committee, where, at the recommendation of one of its members, Paul Priddy, president of the Local Union, it was "deadlocked," meaning that the Local Joint Committee decided to pass [fol. 88] the problem to the Detroit committee for solution. The Dealers employees were disturbed at this turn of events, but their apprehensions were allayed by assurances from Mr. Priddy's assistant that they were protected by their terminal seniority rights and were not in any trouble. Three of these men attended the Detroit hearing, where they expected their interests to be represented and upheld by Mr. Priddy. But, like the innocent little oysters who took the famous walk with the walrus, they were mistaken, for, according to the testimony of Dealers' personnel manager, when Mr. Priddy had suggested to the Local Joint Committee that the grievance be "deadlocked" and sent to Detroit he remarked "That he knew Mr. Hoffa's thinking on matters of this nature and that these men were going to be sandwiched in." (Mr. Hoffa was president of the International, chairman of the National Conference, and chairman of the Detroit committee.)

When the grievance was called on the docket of cases being heard before the Detroit committee, Mr. Priddy, who also was one of the members of that tribunal, vacated the bench, as was customary for the committee members to do when their own cases were involved. At this time he informed the three Dealers employees, to their surprise and consternation, that he was going to take a stand in favor of merging the Dealers and E & L seniority boards. Representing the Local Union, he thereupon proceeded to state the grievance to the Detroit committee and successfully recommend its solution on that basis. The decision of the Detroit committee, announced a few days after the hearing, was to the effect that the seniority registers of Dealers and E & L at Louisville were to be merged within 30 days.

E & L's Louisville terminal evidently is older than that of Dealers, which was established in 1955. This means that by and large the E & L employees will have greater senior- [fol. 89] ity in the event the merger of seniority boards stands. For example, even with the right of the first 50 Dealers men who came from Memphis in 1955 to retain their original Memphis hire-in dates, out of the first 200 men listed on the new board only 58 will be Dealers Men. As a result, on November 25, 1961, just before this suit was filed, Dealers laid off 96 of its Louisville employees who were displaced by former employees of E & L.

The decision of the Detroit committee is being attacked in this case upon the ground that it is so unjust as to imply fraud, or, to put it another way, that it is arbitrary and therefore subject to judicial inquiry and disposition. Specifically, the court is asked to enjoin the Local Union, the International (though it was not, as such, a party either to the contract or the grievance proceedings), and Dealers from carrying into effect the decision of the Detroit committee. Affected E & L employees were made defendants by amendment.

The question has been raised as to the amenability of International to process through service on the president of its affiliated Local Union. Since, however, International was not a party to the contract or the grievance proceeding we believe its connection with the controversy is in-

sufficient to warrant any relief against it. Hence the judgment of dismissal as to International was correct and it is unnecessary to consider the jurisdictional point.

Appellant and his fellow-employees of Dealers rely heavily on one of the provisions of a special rider attached to the contract between Dealers and the Local Union. It reads as follows:

> "The Louisville domiciled employees of the Employer shall have exclusive rights to all work originating at the Louisville Terminal."

[fol. 90] This provision, or its progenitor, grew out of a controversy in Memphis in 1955, when the Memphis employees, during a slack period, sought to displace drivers of loads passing through Memphis from other points of origin. We agree with the chancellor that it is not dispositive of the problem that arose in this case. The real question was whether the E & L drivers are entitled to be employees of Dealers, and the Detroit committee ruled, in effect, that they were. If that is correct, then the rider provision had no more application to their employment than it would have to the hiring of a new employee from any other source.

The contract provision (Article 4, Section 5) on which the Detroit committee based its ruling to the effect that the E & L employees are entitled to employment by Dealers reads as follows:

> "In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the employer and the Unions involved. Any controversy with respect to such matter shall be submitted to the joint grievance procedure."

It is the theory of the E & L employees that the transfer to Dealers of E & L's secondary runs out of Louisville constitutes an absorption of business and that under this clause Dealers is required to absorb the affected employees

as well as the business. We cannot find any such meaning in the clause. It deals only with seniority, and not with initial employment. Unless and until the absorbing company agrees to take the employees of the company whose business is being absorbed no seniority problem is created, hence this provision of the contract can have no application. It does not require that the absorbing company take these [fol. 91] employees, but only that if it does take them the question of seniority between the old and new employees will be worked out by agreement or else be submitted to the grievance procedure.

It must be remembered that even though Dealers and E & L have signed practically identical contracts with the same union, still they are separate agreements. These two employers, their respective employees, and the union are not all one big happy family living under the same tent. As we see it, the displaced E & L employees can have no greater right to employment by Dealers than they would possess if they belonged to a different union, or to no union at all. Note, for example, that the contractual provision just quoted mentions "the *Unions* involved." (Emphasis added.) Suppose that the E & L men were represented by a different union. Would they have any rights under this contract between Dealers and another collective bargaining agent? Surely not. Nor would it be possible for them to initiate a grievance directed toward a company with which they had never enjoyed an employer-employee relationship. They are strangers to the Dealers contract, and it was not made for their benefit.

Since Article 4, Section 5, had no application under the circumstances of this case we are of the opinion that the question was not arbitrable under the grievance procedure. Arbitrability is an issue of law, which may be determined judicially. See discussion in *Harbison-Walker Refrac. Co.* v. *United Brick & C. Wkrs.*, Ky. 1960, 339 SW 2d 933. But even if it were otherwise, we find the decision of the Detroit committee to be so erroneous, and made under such circumstances, that it was arbitrary.

Before proceeding further let us clarify the position of Dealers, the employer, in this matter. It is neutral. Its [fol. 92] relations with its employees have been highly

satisfactory, and the year ending July 1, 1961, was its best year to date for efficiency as to accidents, cargo-damage, and the like. It has recognized all along that the real controversy here was within the union itself. It feels bound to honor the contract and the "decisions of all agents to the employees who legally work for us." At Detroit it took the position that it was up to the union to decide what to do with the employees. In its November 25 letters to the 96 displaced employees it specifically advised them that their dismissal was "necessary due to Union action whereby the decision was rendered" by the Detroit committee requiring absorption of the E & L seniority list. It seems clear that Dealers was scarcely a real party in interest to the grievance proceeding. The actual antagonists were the E & L men on the one hand and the Dealers men on the other, all union members.

Representing these two antagonistic interests was the same union. It is useless to say that the union did not "represent" anyone in the grievance proceeding. Common sense verifies the testimony in this case to the effect that the men looked to and depended on their union officials to espouse their rights. Otherwise, what legitimate business does a union have in such a proceeding. It would be equally unrealistic to hold that the Dealers employees had representation before the Detroit Committee through the presence of three of their number who made the trip with Mr. Priddy and his assistant. As one of them said, he was only a shop steward and was not prepared or qualified to make a presentation to the national grievance panel. So we have a situation in which two antagonistic interests were represented by the same advocate. This of itself is enough to destroy the traditional presumption in favor of an arbitration award. Moreover, we cannot overlook the fact that [fol. 93] even the influence of the union stood to be enhanced by a decision permitting the employment and seniority of its members to cut horizontally across company lines. Under these particular circumstances the solution of the controversy under the cloak of a spurious "grievance" against a virtually disinterested employer simply will not bear careful scrutiny, and when we view the erroneous decision of the Detroit committee against such a back-

ground we judge it as having been arbitrary and violative of natural justice. Any other conclusion would reduce these employees to the status of pawns instead of free men. So, even though it be considered that the Detroit ruling was made pursuant to Article 7, Section 2(d) of the contract, providing for arbitration of all questions of contract interpretation, it still cannot stand. This result is not in conflict but is consistent with the principles stated in *Smith* v. *Hillerich & Bradsby Co.*, Ky. 1952, 253 SW 2d 629.

The most difficult question in this case is whether the complaint of the suing employee is within the exclusive jurisdiction of the National Labor Relations Board.

Section 10(a) of the Taft-Hartley Act, 61 Stat. 146 (1947), 29 USCA §160(a), empowers the NLRB "to prevent any person from engaging in an unfair labor practice . . . affecting commerce," subject to certain exceptions. Unfair labor practices are defined in Section 8 of the Act, 29 USCA §158. An examination of the latter section convinces us that the controversy in this case does not involve an unfair labor practice. Section 8 (b) (2) makes it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3)." However, the latter subsection is confined to discrimination the purpose of which is "to discourage membership in any labor organization." Obviously, this is not such a case. Whatever may have been [fol. 94] the end result of the actions of the union and the employer, they were not motivated by any of the illicit objects and designs set forth in Section 8 of the Act as constituents of an unfair labor practice. As we see it, what we have here is not a labor dispute, but simply an action to construe and enforce a contract under which the complaining employee and his fellows have certain rights of tenure. By entertaining that action the courts of this state neither intend nor claim to exercise any jurisdiction in the field of national labor policy, which has been delegated by Congress exclusively to the NLRB. We find inferential support in that Congress has expressly authorized the federal courts to adjudicate suits for violation of labor contracts (29 USCA §185), which means that the enforcement of a contract is not within the ken of the NLRB merely because it involves a labor problem.

We recognize that if an activity is "arguably" subject to the Act "the States as well as the federal courts must defer to the exclusive competence" of the NLRB. *San Diego Unions* v. *Garmon*, 1959, 359 U.S. 236, 245, 79 S. Ct. 773, 3 L. Ed. 2d 775. However, we are not convinced that the question in this case is reasonably arguable.

Insofar as it dismissed the action against the International union the judgment is affirmed. Otherwise it is reversed with directions that a judgment be entered in accordance with this opinion.

Judges Moremen and Williams dissenting.

Attorney for Appellant: John Young Brown, Louisville, Ky. (516 Ky. Home Life Bldg.).

Attorneys for Appellees: Ralph H. Logan, Louisville, Ky., Hardy, Logan & Tross (506 W. Jefferson St.); Newell N. Fowler, Memphis, Tenn. (81 Madison Ave.).

[fol. 93]

IN COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

Winter Term—February 16, 1962

C. W. MOORE, Individually & For and on Behalf of Members of the Class, Appellant,

vs.

LOCAL UNION NO. 89—INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, et al., Appellees.

Appeal from a judgment of the Jefferson Circuit Court Chancery Branch—First Division

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JUDGMENT—Effective February 13, 1962

The Court being sufficiently advised, it seems to them the judgment herein is erroneous in part.

It is therefore considered that insofar as it dismissed the action against the International Brotherhood the judgment is affirmed and otherwise it is reversed with directions that a judgment be entered in accordance with this opinion; which is ordered to be certified to said Court.

It is further considered that the appellant recover from all the appellees, except the International Brotherhood, his cost herein expended.

Judges Williams and Moremen dissent.

Effective date of this order February 13, 1962.

[fol. 96]

IN COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

[Title omitted]

ORDER RE FILING OF PETITION FOR REHEARING AND NOTICE —March 16, 1962

Came appellees, by counsel, and filed petition for rehearing and notice.

[fol. 98]

IN COURT OF APPEALS OF COMMONWEALTH OF KENTUCKY

[Title omitted]

ORDER OVERRULING PETITION FOR REHEARING—May 4, 1962

The Court being sufficiently advised, the opinion delivered herein is modified on its face, and it is considered that the appellees' petition for rehearing be and the same is hereby overruled.

[fol. 101]

IN JEFFERSON CIRCUIT COURT

Chancery Branch—First Division

No. 61535

C. W. MOORE, individually and for and on behalf of Members of the Class, Plaintiff,

v.

LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and DEALERS TRANSPORT COMPANY, Defendants.

Transcript of Testimony—November 18 and 24, 1961 and December 4, 1961

APPEARANCES:

For plaintiff—Messrs. John Young Brown and Michael J. Clare.

[fol. 102] For defendants, Local Union No. 89, etc.—Mr. Ralph H. Logan.

For defendant, Dealers Transport Company—Mr. Newell N. Fowler, Memphis, Tennessee.

* * * * * * * *

[fol. 112] GAYLE ALEXANDER, next called as a witness in behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

[fol. 113] Direct examination.

By Mr. Brown:

1. Your name is Gayle Alexander?
A. That's right.

2. Are you an employee of Dealers Transport?
A. Yes, sir.

[fol. 120] Cross examination.

By Mr. Logan:

[fol. 121] 38. Now you did make this trip as a representative of Dealers to Detroit, did you not?
A. That's correct.

39. What was the purpose of making that trip?
A. Well, I imagine the Union steward is interested in the employees that he represents.

40. Now you and how many other of your Dealers people went to this meeting?
A. Two more.

41. That totals three?
A. That's correct.

[fol. 122] 44. Did you have anything to say at this meeting?
A. Yes, a little bit.

[fol. 128] 76. Now the E. & L. people I believe you say did file a grievance because of their dissatisfaction with the method they were being placed on the seniority list at Dealers, didn't you say that?
A. They filed a grievance to be placed on it, yes.

[fol. 129] 82. It did proceed through normal channels to the Detroit hearing, did it not?
The Court: He doesn't know that. He knows it got there.
A. I know it got there.

83. You were present?

A. I will say this, the decision was rendered from three to five days, I don't know for sure on the amount of time

but it was quite a while, almost a week, so I don't know how that was rendered.

84. But were present in Detroit, I believe?
A. That's correct.

85. And did E. & L. have some people there?
A. Yes, sir.

86. And you did argue your point of view before the Committee, did you not?
[fol. 130] A. Very little.

* * * * * * *

[fol. 131] ROBERT HILL, Next called as a witness in behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Brown:

1. Your name is Robert Hill?
A. Yes sir.

2. You work for Dealers Transport?
A. Yes, sir.

* * * * * * *

[fol. 132] 7. Are you familiar with the negotiations leading up to the final ruling which has been referred to here as displacing a great many of the employees of Dealers?
A. Yes, sir.

8. What was your connection with the negotiations that led up to this final ruling?
A. I was steward for the Truckaway Department.

* * * * * * *

[fol. 134] 21. Now did you go up to Detroit with the Committee?
A. Yes, sir.

* * * * * * *

[fol. 139] Cross examination.

By Mr. Logan:

. . . . . .

[fol. 140] 51. Haven't Dealers been pulling over E. & L. rights?

A. Not to my knowledge.

52. When you do pull over them will it increase the number of trucks that go over every day?

A. I presume it would.

53. Are you pulling runs now that were formerly pulled by E. & L.?

A. I suppose we are, some of them, yes, sir.

. . . . . .

[fol. 141] 61. Isn't it a fact that Local 89 represents all the members of E. & L. as well as the members at Dealers?

[fol. 142] A. That's what we thought.

62. Isn't it true they are all members of Local 89?

A. That's correct, sir.

63. And E. & L. Transport had exactly the same contract as Dealers had?

A. They had the same book. The rider varies somewhat, I think, a little bit.

. . . . . .

[fol. 143] 67. Did you have anything to say at this meeting in Detroit?

A. Yes, sir, but I was in the same position as Mr. Gayle.

68. You were present?

A. I was present.

. . . . . .

73. You didn't object to—

A. I believe I can say what I said. He said something [fol. 144] about Memphis drivers being brought up here on company seniority, or something to that effect, and I told him that I thought he had signed an agreement that all work originating in Louisville were exclusive rights of

Louisville domiciled employees. I think that's all I said in that meeting. I am sure it is.

74. Did you say that to the Committee in his presence?
A. Yes, sir.

• • • • • • •

[fol. 149] Recross examination.

By Mr. Logan:

• • • • • • •

106. The Union paid all your expenses to Detroit, didn't it?
A. Yes, sir.

107. Both times?
[fol. 150] A. Yes, sir.

• • • • • • •

[fol. 152] 123. Will you tell the Court who Albert D. Matheson is, if you know?
A. I believe he is the legal representative of the employers' side of the Committee in Detroit. I can stand to be corrected in that, but I think that's correct.

124. Now this board in Detroit is composed of both representatives of labor and employers, is it not?
A. That's what I believe, yes, sir.

• • • • • • •

[fol. 158] Mr. Brown: Your Honor, I would like to call Mr. Snites, representative of the defendant, Dealers Transport Company.

Mack Snites, called as if under cross-examination by plaintiffs, being first duly sworn, was examined and testi-
[fol. 159] fied as follows:

Cross examination.

By Mr. Brown:

1. Will you state your name for the record?
A. My name is Mack Snites.

2. Where do you live, Mr. Snites?
A. Memphis, Tennessee.

3. Are you connected with Dealers Transport in any way?
A. Yes, I am.

4. What is your connection?
A. Vice President and General Manager.

• • • • • • • •

[fol. 162] 19. That's all I am asking you, is about the Louisville operation, that's all.

A. For the past two years both E. & L. Transport Company of Kentucky and ourselves have recognized the fact that both of us could not stay in Louisville due to the diminishing traffic caused by 1960, a bad model year 1961, [fol. 163] the institution of multi-level shipments by rail, one of us had to go, there wasn't any question about it. So we got together, and I want to emphasize and re-emphasize, this has been going on now for one and a half or two years, this talk between the two companies. We finally got together after we found out that we both couldn't stay here and stay healthy and the Ford Motor Company told us that this was going to be a one carrier plant.

20. Now let me interrupt you there. Did the Ford Motor Company tell you the basis on which they were going to select the one carrier that represented them?
A. No, sir, they did not.

21. They did not?
A. They did not.

22. Was efficiency of the employees handling their products, did that enter into it?
A. The Ford Motor Company gave us no indication at all that they would pick a carrier on the basis of his financial worth or his competence as a carrier. They just told us that there was only room here for one carrier.

• • • • • • • •

[fol. 164] 26. Which one of the groups did Ford Motor Company select when they selected a carrier?
A. Ford didn't select.

27. Is that right?
A. That's right.

28. I was under the impression they had selected one.
A. No, sir.

• • • • • • •

[fol. 165] 34. All right, go ahead.

A. There has been application made and agreement between E. & L. Transport Company and Dealers Transport Company wherein Dealers Transport Company would purchase the secondary authority out of Louisville, Kentucky, which is now owned by E. & L. Transport Company of Kentucky. The purchase price is naturally a nominal price, which is placed on operating authority and it usually represents that amount of money which it takes to obtain the authority. In this case it is either thirty-five hundred or forty-five hundred dollars.

• • • • • • •

[fol. 166] Cross examination.

By Mr. Logan:

40. Now Mr. Snites, Mr. Brown confines you to what took place in Louisville. Will you explain to the Court the overall transaction which has taken place between Dealers and E. & L.?
A. Yes, I will be glad to.

41. All right.

A. First, let me say that Dealers is a southern carrier domiciled in Memphis. E. & L. is domiciled in Detroit and they are better known, better equipped to service that area and we are better equipped to service the southern area. So with this new method of shipping that the rails have [fol. 167] offered and the fact that Ford is now shipping numerous shipments by boat on the lakes, it became very evident that we were going to have to draw back in, that is, Dealers, into the southern area to better serve Ford and to try to stay alive. And by the same token E. & L. who was spread out from Detroit to New Orleans is going to have to draw back into a designated area. So we filed three

applications before the Commission. We hold the operation authority, initial authority, out of Lorraine, Ohio. So in Application No. 1 we agreed to sell to E. & L. our initial authority out of Lorraine along with certain physical assets in the way of tractors, shop equipment, terminal facilities, and other things. That application and the agreement is before the Commission now. The expiration time for protest has passed. I told you about the second application, the one here, and to kind of offset what we were giving up at Lorraine in the way of revenue as compared to what we could possibly derive at Louisville we also asked for, and E. & L. agreed to sell us, with the Commission's approval, the secondary authority which we needed in the South to serve Jackson, Mississippi, New Orleans, Louisiana, and Shreveport, Louisiana, those being the three Southern rail points that Ford uses. All three applications [fol. 168] are now before the Commission and we are awaiting decision now from the Commission. Does that answer your question?

42. Thank you. Then the operation out of Lorraine, Ohio, in the future will be that of E. & L.?

A. That is depending, of course, on the Commission's approval.

43. If the Commission approves it?

A. Yes, sir.

44. The same as it will be in Louisville, if the Commission approves it?

A. That's correct, sir.

45. Did you have employees in Lorraine, Ohio?

A. Did I have employees?

46. Yes.

A. Yes, I did.

47. What has happened to those employees?

A. As of right now they are still working for Dealers Transport Company.

48. Have any plans been made for them when you quit operation?

A. Yes, sir.

49. What plans have been made?

A. The plans are, and I presume this is correct, that E. & L. will assume our employees up there.

• • • • • • •

[fol. 170] 61. Were you present at the Detroit conference on this matter?

A. Yes, I was.

62. Did you participate?

A. Yes, I did.

63. Did you state your position at the time in the matter?

A. I gave the Committee more or less the same resume of what is happening between the two companies as I have given this morning, yes.

• • • • • • •

[fol. 171] 67. Now, that decision having been rendered, did you set about to put it into effect in Louisville?

A. Yes, sir. The minute I got the decision I immediately got in touch with my Terminal Manager and my Personnel and Safety Manager and told them to comply with the decision, to post it on the bulletin boards so all could see it and to immediately begin to comply with the decision.

• • • • • • •

[fol. 173] 78. I want to call your attention to a section of this agreement that Mr. Priddy relied on in making this decision that cost these Louisville men their jobs, and ask you—I want you to read the first two lines there. Have you taken over, have you absorbed the business of E. & L.?

A. We have absorbed a certain portion of it.

• • • • • • •

[fol. 175] Cross examination.

By Mr. Logan (continued):

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[fol. 176] 89. Have you had any discussion with E. & L. authority and the Commission about going ahead and operating as though it had been approved, pending approval?

A. Yes, sir, and that's contingent on the merger of this board.

90. On the what?

A. On the merger of this board and the outcome of this hearing.

• • • • • • • •

[fol. 204] LESLIE H. ATTERBURY, called by plaintiffs as if under cross-examination, being first duly sworn, was examined and testified as follows:

Cross examination.

By Mr. Brown:

1. Mr. Atterbury, state your name first, state your full [fol. 205] name.

A. Leslie H. Atterbury.

2. And what, if any, connection do you have with the Teamsters Union?

A. Assistant Agent, General Drivers, Warehousemen and Helpers, Local 89.

3. What connection did Local 89 have with the International Union?

A. We are affiliated with the International Union.

4. You are a Local of the International Union, are you not?

A. That is correct.

5. Under whom do you work?

A. Under the supervision of our president, Paul W. Priddy.

• • • • • • • •

[fol. 207] —13. He can explain now. You can explain.

A. I may qualify the instructions. My instructions from Mr. Priddy are to the best of my ability impartially administer the agreement. When I say impartially I mean that the company has certain obligations under the agreement, the men have certain obligations under the agree-

ment. In every instance my instructions are to see that the agreement in its entirety is complied with.

14. And your instructions are to call the thing as you see it honestly between all parts of your group of men, that's your instructions, isn't it?

A. That's correct.

15. And that's what you sought to do in this particular grievance here now, isn't it?

A. Yes, sir.

16. In your conversations with Mr. Joe Clark, and you did have conversations with him, did you not?

A. Very definitely.

17. And with the other men who have testified here, Mr. Hill, Mr. Gayle Alexander, Mr. Barksdale and Mr. Joe Clark, you undertook to tell them what the plain meaning of this contract meant to you prior to this thing going to Detroit, did you not?

A. Yes, sir, and I might contribute this, anyone else in [fol. 208] the employ of Dealers Transport Company that asked a question, most of the questions were hypothetical or "if" questions.

18. That's right.

A. And based on current available information to the best of my ability I gave them an honest answer.

19. That's right. Do you recall a conversation with Mr. Joe Clark here in which you assured him that Dealers Transport employees had nothing to worry about because they were protected by the rider provision of the contract and by the other provisions of this contract, that they had nothing to worry about prior to hearing this grievance?

A. Honestly, sir, I don't think the rider provision of the contract covers this particular case.

20. I didn't ask you what you thought about the rider provision. I asked you, do you remember assuring these men that they were protected by that contract and they had nothing to worry about?

A. Based on current available information.

• • • • • • •

[fol. 209] 23. I don't care what you base it on, that's what you told them, did you not?

Mr. Logan: Let him answer.

A. Your Honor, I think I might clear up any misunderstanding that might be developing. Sir, I am reading from the agreement. First, I have never purported or intended or in any way indicated that I had any authority to settle any controversy over seniority. I think any discussion that I have had with men in relation to the seniority controversy ultimately they were advised that any controversy over the employees' standing on such list, referring to the seniority list, shall be submitted to joint grievance procedure, Article 7 of the agreement. That is a quote from Article 4, Seniority, and I am positive that in no instance have I indicated to anybody that I had the authority vested in me to settle a seniority controversy.

• • • • • • •

[fol. 210] 26. First, tell me if you told them that, then you can make any qualification you want to. Did you tell them that?

A. At various times I said in my opinion they didn't have anything to worry about.

27. That's what I wanted to get at.

A. Now to qualify that I think I should make a certain statement. There was a meeting in which Mr. Williams from Dealers Transport, Mr. Jack Hokmes from E. & L. Transport, Mr. Art Collins from E. & L. Transport, and Elmo Evans from E. & L. Transport advised myself and another agent who participated in the meeting with me, Norman Hubb, that there was no kind of a trade, understanding at all, between management of the two companies. I was advised at that time that Ford Motor Company had seen fit to take the business from one carrier and give it to another carrier. Subsequently and progressively I found out that those were not the true facts. I do believe that those were the facts that were at the disposal of local management. Now those are local management people with the [fol. 211] exception of Mr. Collins who works out of E. & L.'s Dearborn office.

28. Mr. Atterbury, before you gave these men this advice that they had nothing to worry about, did you clear that with Mr. Paul Priddy so that you would be taking on his thinking to these men on this particular controversy?

A. To the best of my recollection, I didn't.

• • • • • • •

[fol. 212] 32. You had discussed it with Mr. Paul Priddy before you went to Detroit?

A. I certainly did. He was aware of the grievance. Actually the grievance was heard and deadlocked.

33. Who deadlocked it?

A. At Kentucky Conference level.

34. Who deadlocked it?

A. The Kentucky Conference of Teamsters, Automobile Transporters Grievance Panel.

35. What individual deadlocked it?

A. Sir, no individual deadlocked it.

36. Were you there?

A. Yes, sir.

37. What individual got up and said in substance that this is a matter for the National Committee, whatever you call it there, to settle and not for the Local? What individual made that statement?

A. Well, I presume several individuals may have made the statement.

38. I don't want several individuals. What individual made that statement at that meeting, Mr. Atterbury? Now [fol. 213] you know it was Paul Priddy, don't you?

A. Paul Priddy and others probably made that statement because it was deadlocked and it was unanimously deadlocked and every man sitting on the panel must have thought it was a matter to be referred to the national level.

39. Who was the first one to announce this is not a matter we can settle but a matter to settle on the national level?

A. Our president who is also president of the Kentucky Conference of Teamsters.

40. What is his name?

A. Paul W. Priddy.

41. So it was Paul W. Priddy that announced the deadlock, wasn't it?

A. It is customary when there is a decision for our president, Mr. Priddy, to announce the decision, sir.

. . . . . .

43. Nobody on that took issue with Paul, did they?

A. No, sir. We don't make practices of taking issue to any decisions because the agreement is clear and specific. [fol. 214] The agreement provides that controversies are settled at certain levels, at the panel level, and certainly we would not take exception to a decision any more than we would take exception to a decision of this Court, sir.

. . . . . .

[fol. 217] 58. That's right. So that up until the time you left Kentucky Mr. Priddy was of the opinion that the E. & L. drivers have no right to transfer, you were of that opinion and you passed that on to the employees at Dealers, didn't you?

A. I think that is substantially true. I would like to add this, sir. It was Mr. Snites' testimony in Detroit, and honestly the first time I was aware that there had been any understanding between management of the two companies in relation to what has happened, sir.

. . . . . .

[fol. 219] 62. Did you let the Dealers employees know that at Detroit you and Mr. Priddy were going to take the opposite view from the opinion which you had given them consistently, all of them, by your own admission here, up to the time they went to Detroit? Did you let them know that they would have no representation there?

A. Sir, first, I won't concede they didn't have representation, because they had equal representation with the other parties to the controversy. There were three stewards from E. & L., three stewards from Dealers. I think all interested parties who I might define as the three stew-

[fol. 220] ards from Dealers and three stewards from E. & L., president Paul Priddy and myself, were simultaneously advised that there was negotiations of some sort and some kind of an understanding between the companies.

63. When did you first get that information?

A. It was in Mr. Snites' testimony. I might contribute this. Prior to that time there were rumors, there were many rumors, none of them confirmed, none of them coming from an authoritative source, who I would define as local management representatives or officials of the company, sir.

• • • • • • •

[fol. 221] 68. All right, up to that time when you heard Mr. Snites testify, you had consistently told all of the Dealers employees that under the contract and precedent in the industry they were safe, until you heard Mr. Snites testify?

A. With qualifications. When discussions would come up, I think in several instances I indicated to them if we had accurate information that this would be my opinion. I think from time to time I also passed on to them some [fol. 222] of the rumors that I had been hearing.

• • • • • • •

[fol. 229] 92. Mr. Priddy sat on the Committee, did he not, that heard this grievance?

A. Sir, the procedure is this. If a member of the Committee has a case he steps down, he don't listen to the facts of the case. Normally a union representative would be presenting the case. He is also not present when a decision is made. In other words, it is mandatory that he not participate in the capacity of a committeeman or be present and participate in a decision of the case that affects his Local Union or that he has personal interest in.

93. And Mr. Priddy was personally interested in this [fol. 230] case and he stepped down?

A. Very definitely.

94. Will you tell the Court whether or not he stepped down before or after he made his statement?

A. Before, sir.

95. You remember that, do you?

A. Oh, very definitely, he presented the case. I think all parties present were aware of the fact that he was not sitting as a committeeman but was presenting the facts that he had at his disposal.

96. It is your memory that he stepped down as committeeman before he made the statement?

A. Definitely, sir.

97. Did anyone representing Local 89 make any argument there before the Committee for the employees of Dealers Transport?

A. Several times Mr. Priddy asked the parties who are the stewards and representatives and the spokesmen of the men from the two companies, if they had anything to say or anything more to contribute.

98. Whom did he make that request of?

A. He was facing them and I presume made it on an unqualified and inclusive basis. He said anyone. I think they were all included, sir.

* * * * * * *

[fol. 234] DAVID E. STOVALL, called by plaintiffs as if under cross-examination, being first duly sworn, was examined and testified as follows:

[fol. 235] Cross examination.

By Mr. Brown:

1. Will you state your full name?

A. David E. Stovall.

2. Mr. Stovall, what, if any, position do you hold with Dealers Transport?

A. I am Personnel and Safety Director for Dealers Transport Company.

* * * * * * *

[fol. 251] 56. I show you a copy of the Automobile Carrier Truckaway agreement and I will ask you if the original of this agreement between Dealers Transport and Local 89 was a signed agreement.

A. I believe, I may be wrong in this, that the signing of this is authorized by—the Union authorizes its negotiating representatives and the company its negotiating representatives to sign the contract, the national agreement.

57. Does anybody else sign it besides someone for Dealers Transport and someone for Local 89?

A. As I say, we authorize, or actually Dealers Transport doesn't sign it or I don't believe they signed that one. [fol. 252] We give power of attorney to our representatives on the negotiating committee in Detroit to sign for us and the Union does the same, I believe, with their people, if I am not mistaken.

58. Who negotiated this contract in Detroit, if you know? Do you know the name of the organization?

A. The representatives which has been referred to heretofore of the Automobile Transporters Labor Division which is in effect the national representatives of the automobile transporting companies and the Union. I don't know the exact designation of their committee. It is a committee. It is formed into a committee which is the last echelon of negotiation in arriving at contracts.

. . . . . .

[fol. 253] 62. All right, sir. Can you tell us then under the terms of this contract who Dealers Transport recognizes as the bargaining agent for its employees covered under this contract?

A. Well, for the purpose of negotiation of the contract or their representative?

63. Their designated representative. Whom did you recognize as the bargaining agent?

A. Well, the negotiating agent is the Driveaway—Truckaway and Driveaway Conference.

64. And that is in Detroit?

A. Yes.

65. And that's whom this contract was negotiated with, is it not?

A. Yes. That's members of the Teamsters Union from the various Local Unions.

• • • • • • •

[fol. 256] 85. Do you know when the last day is that E. & L. will get secondary rights in here?

A. Well, they will have secondary rights until such time as the Commission approves this transfer which we spoke of.

[fol. 257] 86. After the Commission approves that, what happens to E. & L.'s rights?

A. Then we start hauling the secondary, the rights are transferred into our name.

87. Then E. & L. will not be in business in Louisville at all, will they?

A. No, sir, they will not.

• • • • • • •

[fol. 261] PAUL W. PRIDDY, called as a witness in behalf of defendants, Local Union No. 89, etc., being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Logan:

1. Your name is Paul W. Priddy?

A. That's correct.

2. Are you president of General Drivers Local—will you tell the name?

A. General Drivers, Warehousemen and Helpers, Local Union No. 89.

3. How do you procure that office, Mr. Priddy?

A. Through an election each three years by secret ballot.

4. Are all of the officers of Local 89 elected by secret ballot?

A. They are.

[fol. 262] 5. How do the stewards obtain their positions?

A. Through an election at the individual meetings of the individual companies.

• • • • • • • • • •

9. As a local autonomous organization, are you associated or affiliated with the National Truckaway and Drivers Conference?

A. We are through affiliation, yes.

• • • • • • • • •

[fol. 263] 17. Now Mr. Priddy, does your Union represent both the members of the E. & L. Transport Company and Dealers Transport Company?

A. It does.

18. How long has it represented them?

A. In the instance of E. & L. employees who were [fol. 264] formerly Central Truckaway employees some twenty-two or three years, and in the instance of the Dealers Transport employees for the length of time that the Dealers Transport Company at the closing of the Memphis Ford plant at the time they moved here we have been representing the Dealers employees since that time, which I think the time is 1955 or '6, somewhere in that vicinity.

• • • • • • • • •

[fol. 267] 27. Now Mr. Priddy, this dispute that's in question here, have you any prejudices one way or the other against the employees of Dealers Transport or E. & L. Transport?

A. I have none.

28. Is it your duty as president of Local 89 to see that proper grievances are processed when presented?

A. It is.

29. Were grievances presented in this case?

[fol. 268] A. They were.

30. Will you tell the Court, if you know, when the grievances—what grievances were filed and when?

A. I don't have the grievances in front of me, but the record of course speaks for itself. The Baker grievance

and the Ray Lewis grievance were filed and as a result of those grievances being filed is the reason we are here.

31. Well, what happened when the grievances were filed? What was done?

A. When the grievances were filed, they were filed with Mr. Les Atterbury and as required they were properly docketed on the agenda to be heard at the grievance panel.

* * * * * * *

Mr. Brown: Your Honor, our only issue is whether or [fol. 269] not their decision is in violation of this contract. You can put all that in if you want to.

* * * * * * *

33. Mr. Priddy, I will show you a grievance signed by Ray O. Lewis and ask you to state to the Court the date of that grievance.

A. August 14, 1961.

34. Now I will ask you if subsequently that grievance was heard before the Local Committee and, if so, the date and what disposition was made of it?

A. It was heard before the Local Committee on 8-23-61 and deadlocked to Detroit for decision.

35. Now Mr. Priddy, this deadlock to Detroit, is it signed by anyone?

A. Signed by—it also says "Deadlocked to Detroit for interpretation."

36. And signed by whom?

A. Paul W. Priddy and D. E. Stovall.

* * * * * * *

[fol. 270] 38. Mr. Priddy, there has been much discussion here that you personally deadlocked the Local Committee. Will you tell the Court about that?

A. Any person on the grievance committee has a right to make any statements as to his beliefs on the facts pre-[fol. 271] sented that he desires. I made the statement practically, there is no denying it, there was a lot of time spent on it here, but I made the statement that this is a

matter that would probably come under a matter of interpretation and should rightfully be decided by the people who negotiated the contract. I made that statement. There was a unanimous decision of three management people and three labor people to deadlock the case.

39. There has been some testimony here about your membership on the Committee in Detroit. You are a member of that Committee, are you not?

A. I am on the Grievance Panel.

40. Are you permitted to sit on the Panel and hear your cases you present?

A. The answer is no, and any person who is a member of the Panel doesn't sit when decisions are being made in his own case.

41. Is this a rule of the Committee?

A. This is the rule of the Committee.

. . . . . .

[fol. 273] 44. What was your position then and what is it now?

A. I had some contact with these three men outside in the hall, as they say, that's true, because we are all outside in the hall when we are waiting for various cases to [fol. 274] be heard, and I told them then, I said, "If this decision comes out of here on the basis that some of the boys at Dealers and you indicating that you wanted to come, that is to say, that if E. & L. men in this instance would have to go to the bottom of the list or have no job, actually it is a short sighted view because with the change of operations as they are today three months from now or six months from now Dealers Transport may be completely out of the picture and another carrier in, then you too would have no job at that point if this would happen." I said that they should be merged together in the interest in the future too of Dealers and E. & L. to protect the old men to keep their jobs rather than being displaced three months, six months, nine months from now by another group. That's what I said.

. . . . . .

Cross examination.

By Mr. Brown:

. . . . . .

[fol. 276] 51. Did you tell the E. & L. workers that they might as well look for another job, that if Dealers took them over they would be out? Did you tell them that?

A. I told them this, and there is plenty E. & L. men can testify I told them, that if the facts were as we had been told them it looked black for them. Yes, I did, but let me tell you what the facts were.

. . . . . .

A. I had sent Mr. Atterbury out to contact the officials of the two companies to determine on what basis there was going to be a sale, merger, trade or whatever it might be, and he reported back to me that they had told him there were going to be no interchanges, period, and that Ford [fol. 277] Motor Company was cancelling out one and keeping the other. Now based on that state of facts I said to the men, "It looks black. We will keep trying to find the facts." And we found in the Federal Register, not given to us by either management, we found in the Federal Register that one of the companies was buying some of the rights. So during that interim in between everybody was shocked, everybody didn't know for sure what the facts were until they began to assemble the facts. It now has developed in testimony here and up there that there was a trade made, one company for the other, which is a sale.

. . . . . .

[fol. 282] 75. All right.

A. When I appeared before the Committee I read the clauses of the contract and I said that here is a situation where the local union represents both groups of employees. That was my opening statement. And I said this is a difficult thing to handle. Then I read the clauses of the [fol. 283] contract which have been explained here and read into the record here, and I said that in the interest of protecting the old employees now and in the future, because there is no record or no proof that Dealers won't

either be ordered out by Ford or sell out to somebody else six months from now, so in the interest of protecting the long time employees of both the people, especially since the work is being transferred over to this other operation, in effect these people would be following their work, which would have been true had the other company been the successful one to stay. The position wouldn't have been changed on my part, contrary to what some people think. Now this being true I said it is my opinion, and I have no proof of this, I said that these two companies traded out, the one in Lorraine for the one in Louisville, and I said it makes no difference, this is my argument before the group, it makes no difference whether you trade an apple for an orange or whether you trade something else for it, it is a buy just as well as giving money for it. And I said it is my assumption that this is correct. Mr. Snites followed me to the stand and said Mr. Priddy is absolutely correct, we got together and transferred, as he did here the other day, we got together and testified which [fol. 284] one was going to stay and Ford didn't order either one of us out, and that's what was said there, and based on that the Committee made their decision.

76. Now had you resigned as a member of the Committee before you made that beautiful little speech?

A. That's automatic, John.

. . . . . .

[fol. 286] 85. So it would have been a futile thing for some Dealers employees to file another grievance contrary to some agreement you already made?

A. No, I don't think so. You made much contention here, or got witnesses to make much contention, to the fact that the Union was biased, or you attempted to show that, in the decision. Now on what basis were they biased? We represent both people and we don't get any money from one more than the other one, you understand, John. I don't like this assumption that we are biased in the situation. We are neutral, you might say. We have to present the facts and we have to protect people in spite of themselves.

86. You prefer, of course, that these Dealers employees be docile about the matter and let you dominate the situa-
[fol. 287] tion and take it gracefully?

A. If you take this man that's 38th on the list that you are talking about, on the assumption that you are trying to prove here, I say six months from now if Dealers isn't here he won't have a job under your assumption.

86. If you say that?

A. No. Under your assumption he wouldn't have a job if he went to the bottom of the list on a new purchase company. So sometimes you have to protect people in spite of themselves.

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[fol. 322]

DEFENDANTS' EXHIBIT NO. 2

AUTOMOBILE TRANSPORTERS LABOR DIVISION
2150 GUARDIAN BUILDING
DETROIT 26, MICHIGAN

BULLETIN NO. 162

TO: ALL MEMBERS AND LOCAL UNIONS

RE: SENIORITY AND OTHER INTERPRETATIONS MADE BY THE AUTOMOBILE TRANSPORTERS JOINT CONVERENCE COMMITTEE AT THEIR OCTOBER 17, 18 AND 19, 1961 MEETING

The Automobile Transporters Joint Conference Committee had before it several very important problems and/or interpretations at its session on October 17, 18 and 19, 1961. Because of the importance of the Committee's decisions to all of the Industry and Local Unions, we are setting forth the most important decisions in this Bulletin.

TRUCKAWAY, DRIVEAWAY AND LOCAL AGREEMENTS

Seniority

"49. LOCAL UNION NO. 89 (LOUISVILLE) VS. DEALERS TRANSPORT CO. AND E & L TRANSPORT CO. OF KY.

Re: Request of Employees R. L. Lewis and Howard Baker on behalf of themselves and other

former employees of E & L Transport Co. of Ky. as to their seniority rights with Dealers Transport Co. because of the discontinuance of operations in Louisville by E & L Transport Co. of Ky.

"DECISION:

By unanimous vote the Committee held that in accordance with Article 4 and particularly sub-sections 4 and 5 of the Automobile Carrier Truckaway Agreement, Automobile Carrier Driveaway Agreement and the Automobile Carrier City Delivery, Pull-Out, Mounting Service and Yard Agreement and Garage Rider, the Employees of E and L Transport Co. of Ky. and Dealers Transport Company at the Louisville, Kentucky Terminal shall be sandwiched in on master seniority boards using the presently constituted seniority lists and the dates contained therein at Louisville, Kentucky (past practice on layoffs and recalls shall be maintained as in the past).

"1. Presently constituted terminal seniority lists shall apply for seniority purposes recognizing that the first fifty (50) men who came from Memphis, Tennessee to Louisville, Kentucky maintained their original date of hire and took their proper place on the Louisville seniority boards of Dealers Transport Company. Men subsequently who came to Louisville from Memphis went to the bottom of the board at Dealers Transport Company and maintained their seniority for fringe benefits only.

2. This shall be accomplished within thirty (30) days. Copies of this decision shall be posted on the bulletin boards at both companies."

* * * * * * *

[fol. 347] DAVID E. STOVALL, called by plaintiffs as if under cross-examination, having been heretofore duly sworn, was examined and testified as follows:

Cross examination.

By Mr. Brown:

1. Mr. Stovall, have you caused to be mailed to a number of employees of Dealers, letters dismissing them from service with the Dealers Company?

A. Yes, sir, I have dismissed, effective the 25th of November, 1961, ninety-six of our employees based upon this decision which in fact replaced them with other employees from another company, E. & L. Transport Company.

* * * * * * *

[fol. 349] Cross examination.

By Mr. Logan:

* * * * * * *

8. I am not asking you that. Are they laid off from your company at this time?

A. They are laid off, yes, sir.

9. They are not fired?

A. They are not fired; no, sir.

* * * * * * *

[fol. 354] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 355]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1962

WALTER HUMPHREY, ET AL., Petitioners,

vs.

C. W. MOORE, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—July 17, 1962

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 4, 1962.

Potter Stewart, Associate Justice of the Supreme Court of the United States.

Dated this 17th day of July, 1962.

[fol. 356]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1962

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 89, Petitioners,

vs.

C. W. MOORE, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—July 17, 1962

Upon Consideration of the application of counsel for petitioner(s),

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Potter Stewart, Associate Justice of the Supreme Court of the United States.

Dated this 17th day of July, 1962.

[fol. 357]

SUPREME COURT OF THE UNITED STATES

No. 407—October Term, 1962

WALTER HUMPHREY, etc., et al., Petitioners,

vs.

C. W. MOORE, etc., et al.

ORDER ALLOWING CERTIORARI—January 21, 1963

The petition herein for a writ of certiorari to the Court of Appeals of the Commonwealth of Kentucky is granted and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 358]

SUPREME COURT OF THE UNITED STATES

No. 408—October Term, 1962

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 89, Petitioner,

vs.

C. W. MOORE, ET AL.

ORDER ALLOWING CERTIORARI—January 21, 1963.

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